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|---------------------------------|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.                 | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/575,968                      | 04/14/2006  | Marco Poppi          | 1034170-000031      | 5120             |
| 21839                           | 7590        | 10/04/2007           |                     |                  |
| BUCHANAN, INGERSOLL & ROONEY PC |             |                      | EXAMINER            |                  |
| POST OFFICE BOX 1404            |             |                      | WEEKS, GLORIA R     |                  |
| ALEXANDRIA, VA 22313-1404       |             |                      |                     |                  |
|                                 |             |                      | ART UNIT            | PAPER NUMBER     |
|                                 |             |                      | 3721                |                  |
|                                 |             |                      | NOTIFICATION DATE   | DELIVERY MODE    |
|                                 |             |                      | 10/04/2007          | ELECTRONIC       |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com  
debra.hawkins@bipc.com

# Office Action Summary

Application No.

10/575,968

Applicant(s)

POPPI, MARCO

Examiner

Gloria R. Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9 and 11-20 is/are rejected.
- 7) ☒ Claim(s) 6 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5, 7-9 and 11-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Faskhoody et al. (USPN 6,543,205).

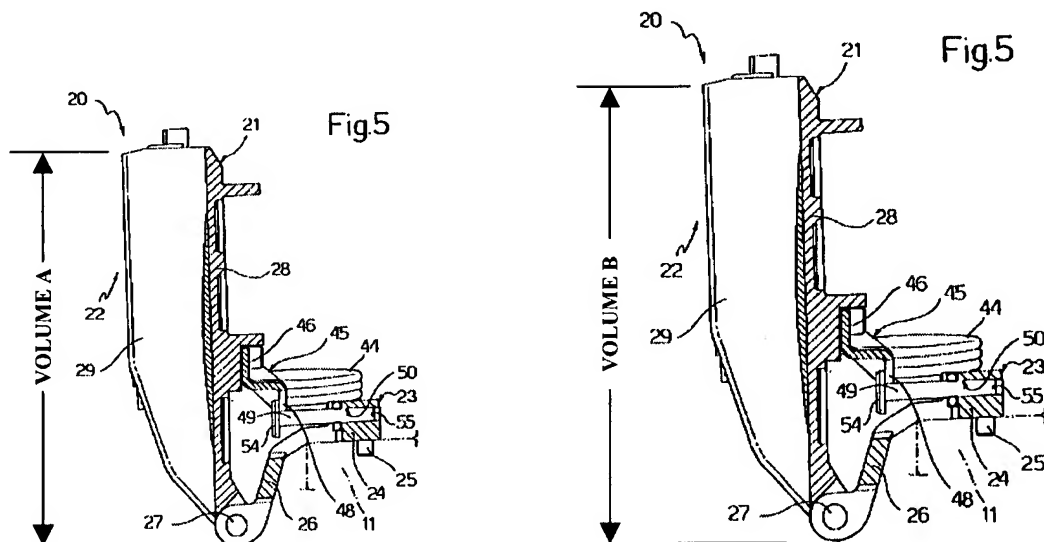
The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

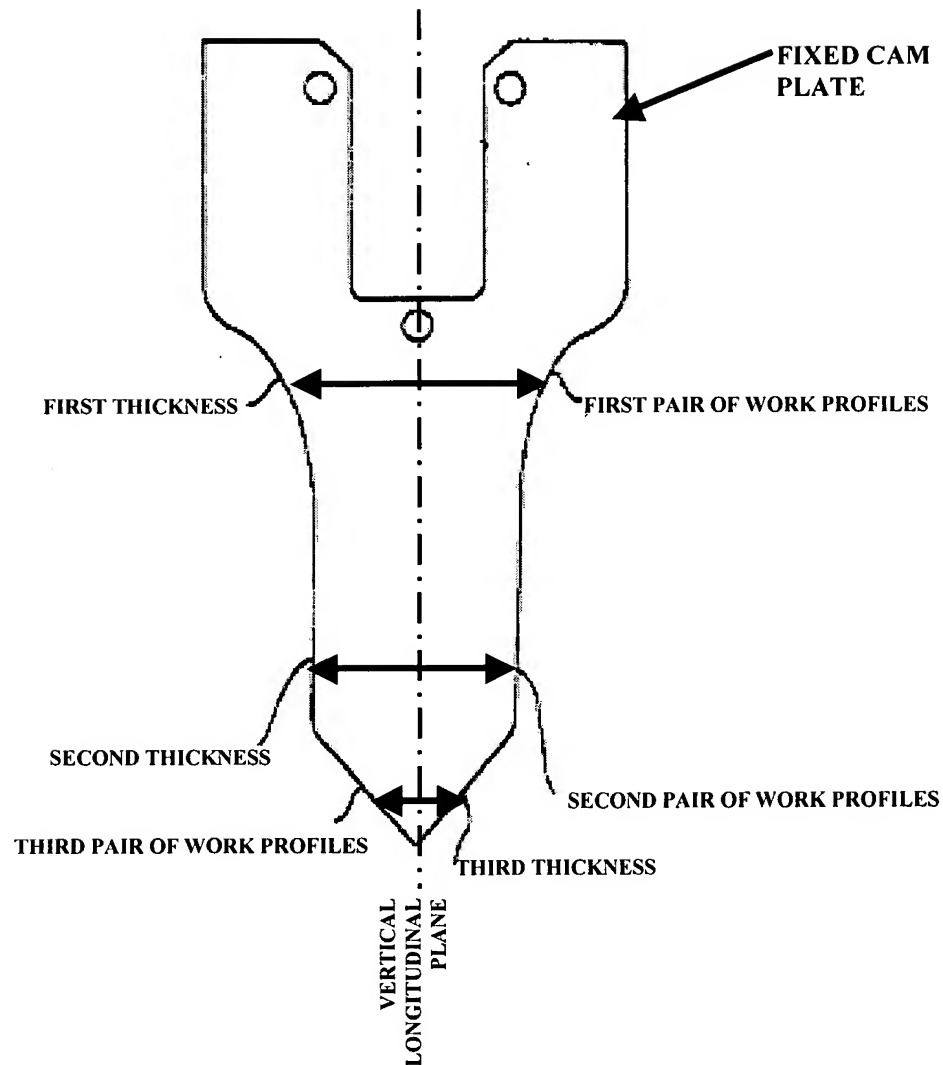
With respect to claims 1-5 and 7-9, Faskhoody et al. discloses a form-and-seal unit comprising: a fixed structure 3; forming means 5, 5' which interact cyclically with a tube of packaging material 2, the forming means comprise at least two pairs of jaws 7 having sealing means 13, 14 movable between an open position (figure 6) and a closed position (figure 11); respective pairs of forming flaps carried by the respective jaws 7 capable of having various sizes (column 2 lines 44-45), and having respective half-shell forming portion 22; two fixed cam means 56 on opposite sides of the forming means 5, defined by flat plates, a top cam profile 57 and two bottom cam profiles 58, 59; two cam follower means 39 carried by the forming flaps 21.

In reference to claims 11-20, Faskhoody et al. discloses a form-and-seal unit comprising: a fixed structure 3 including two guides 4; two forming assemblies 5, 5' which interact along a vertical axis with a

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tube of packaging material 2, the forming means comprise at least two pairs of jaws 7 having sealing means 13, 14 movable between an open position (figure 6) and a closed position (figure 11); respective pairs of forming flaps carried by the respective jaws 7 capable of having various sizes (column 2 lines 44-45), and having respective half-shell forming portion 22; a fixed cam plate 56 having a first and second pair of work profiles 57-60, wherein the first and second work profiles define a top cam profile 57, 58 spaced a distance from the vertical axis, the fixed cam further having a bottom cam profile 59, 60 spaced a second and different distance from the vertical axis with respect to the top cam profile(s); and two cam follower means 39 carried by the forming flaps 21. To produce packages of various volumes, the forming flaps may have different vertical dimensions, such that different forming flaps of different volumes are engageable with the work profiles of the fixed cam irrespective of their volume. Column 6 lines 21-30 Faskhoody et al. states that such a structure eliminates downtime required in changing the fixed structure of the apparatus.





***Allowable Subject Matter***

4. Claims 6 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments filed July 11, 2007 have been fully considered but they are not persuasive.

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification.<sup>1</sup> Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow.<sup>2</sup>

Applicant has argued that Faskhoody et al. fails to disclose fixed cam means that define different work profiles selectively engageable by cam followers. Examiner has found a reasonable interpretation of the phrase “work profile” to be an operative form or contour(s). As recited in the rejection above, Examiner has interpreted each contour variation 57, 58, 59 in the cam means 56 to define a distinct “work profile” engageable by a respective cam follower.

In response to Applicant’s concern of Faskhoody’s disclosure of forming flaps of differing sizes, column 6 lines 21-30 of Faskhoody et al. states that the forming flaps can be interchanged to define packages of various volumes, each forming flap variation selected having a cam follower engageable with the work profiles of the cam means.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and

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<sup>1</sup> See also MPEP § 2111.

<sup>2</sup> See also MPEP § 2111.01.

any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

/Gloria R. Weeks/

Examiner

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grw

September 24, 2007

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long, sweeping horizontal line extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700